

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO

KENT R. CARTER,

Plaintiff,

vs.

No. CIV 99-0040 JC/LFG

STATE OF NEW MEXICO TAXATION AND
REVENUE DEPARTMENT, GOVERNOR
GARY JOHNSON, and JOHN J. CHAVEZ,

Defendants.

MEMORANDUM OPINION AND ORDER

THIS MATTER came on for consideration of Defendants' Motion to Dismiss Civil Action (*Doc. 8*), filed March 10, 1999. The Court has reviewed the motion, Plaintiff's response, and the relevant authorities. The Court finds that the motion is well taken and will be granted.

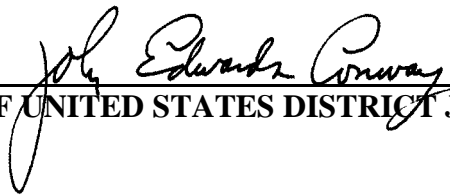
Plaintiff seeks a declaratory judgment and an injunction restraining the State of New Mexico Taxation and Revenue Department from collecting taxes that the State claims are due. I find that these claims are barred by the Tax Injunction Act, 28 U.S.C. § 1341. Because I do not have jurisdiction over these claims, they must be dismissed.

Plaintiff also seeks damages against the State of New Mexico, its Governor, and the Secretary of the Taxation and Revenue Department. The Eleventh Amendment bars the claims against the state and any claims against the individual defendants in their official capacity. Plaintiff's complaint does not allege any conduct that would implicate the individual defendants in their individual capacity. Therefore, I must dismiss these claims as well.

Wherefore,

IT IS ORDERED that Defendants' Motion to Dismiss Civil Action (*Doc. 8*), filed March 10, 1999 is **granted**. A final order in accordance with Rule 58 of the Federal Rules of Civil Procedure shall be entered.

DATED this 28th day of April, 1999.



CHIEF UNITED STATES DISTRICT JUDGE

Plaintiff *pro se*: Kent R. Carter
Carlsbad, New Mexico

Counsel for Defendants: Sean Olivas
Keleher & McLeod, P.A.
Albuquerque, New Mexico